



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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March 29, 2002

Colonel David L. Hansen  
U. S. Army Corps of Engineers  
Norfolk District, Fort Norfolk  
803 Front Street  
Norfolk, Virginia 23510-1096

RE: Final Section 401 Consistency Determination for 2002 Nationwide Permits

Dear Colonel Hansen:

This is the Commonwealth of Virginia's final decision with regard to §401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions. These NWPs were published in Part II of the *Federal Register* on January 15, 2002, with an effective date of March 18, 2002. We also note that on February 13, 2002 the Corps published corrections to the January 15, 2002 NWP issuance to provide technical edits. The Norfolk District Regional Conditions were public noticed on August 9, 2001 and subsequently amended in public notices on October 15, 2001, December 5, 2001 and December 31, 2001. The Commonwealth supports the issuance and use of nationwide and regional permits to expedite the processing of permits while safeguarding the environment and reducing duplication of effort by government regulatory agencies.

Pursuant to Virginia Water Protection Permit Regulation 9VAC 25-210-130H, the State Water Control Board is issuing this final §401 Water Quality Certification as meeting the requirements of the VWP regulation after advertising and accepting public comment for 30 days on our intent to provide this certification.

The State Water Control Board provides unconditional §401 Water Quality Certification for all of the Norfolk District Regional Conditions and for the following Nationwide Permits, as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification:

- NWP 1: *Aids to Navigation*
- NWP 2: *Structures in Artificial Canals*
- NWP 3: *Maintenance*
- NWP 4: *Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities*
- NWP 5: *Scientific Measurement Devices*
- NWP 6: *Survey Activities*
- NWP 8: *Oil and Gas Structures*
- NWP 9: *Structures in Fleeting and Anchorage Areas*
- NWP 10: *Mooring Buoys*
- NWP 11: *Temporary Recreational Structures*
- NWP 15: *U.S. Coast Guard Approved Bridges*
- NWP 20: *Oil Spill Cleanup*
- NWP 22: *Removal of Vessels*
- NWP 23: *Approved Categorical Exclusions*
- NWP 28: *Modifications of Existing Marinas*
- NWP 29: *Single Family Housing*
- NWP 30: *Moist Soil Management for Wildlife*
- NWP 31: *Maintenance of Existing Flood Control Facilities*
- NWP 32: *Completed Enforcement Actions*
- NWP 33: *Temporary Construction, Access and Dewatering*
- NWP 34: *Cranberry Production Activities*
- NWP 35: *Maintenance Dredging of Existing Basins*
- NWP 36: *Boat Ramps*
- NWP 37: *Emergency Watershed Protection and Rehabilitation*
- NWP 38: *Cleanup of Hazardous and Toxic Waste*
- NWP 41: *Reshaping Drainage Ditches*

The following Nationwide Permit is not applicable in the Commonwealth:

- NWP 24: *State Administered Section 404 Programs*

The State Water Control Board denies §401 Water Quality Certification for the following Nationwide Permits, as these types of projects require individual review under state laws:

- NWP 16: *Return Water from Upland Contained Disposal Sites*
- NWP 17: *Hydropower Projects*

The State Water Control Board provides conditional §401 Water Quality Certification for the remaining fourteen Nationwide Permits, as detailed below.

For NWP 40: *Agricultural Activities*, §401 Water Quality Certification is provided except for the location of concentrated animal feeding operations or waste storage facilities in surface waters.

For the thirteen Nationwide Permits listed below, §401 Water Quality Certification is provided except under the following five general conditions as well as any additional specific conditions listed next to each permit:

1. When compensatory mitigation is in the form of the purchase of mitigation bank credits and the bank is not located within the same hydrologic unit or an adjacent hydrologic unit within the same river watershed as the impacted site, as defined by the Hydrologic Unit Map of the United States, 1980, unless the conditions listed in Section 62.1-44.15:5E of the Code of Virginia relating to bank and impact type and location are met.
2. When compensatory mitigation involves only the preservation of wetlands and/or wetland or upland vegetated buffers without accompanying creation or restoration of wetlands or the purchase of mitigation bank credits, or does not meet the goal of no net loss of wetland acreage and function
3. For the location of a stormwater management facility in perennial streams or in oxygen- or temperature-impaired waters
4. For impacts to perennial streams in excess of 500 linear feet and for impacts to intermittent streams in excess of 1500 linear feet
5. For any water withdrawal project

In addition to the above five exceptions to certification, which apply to all the following NWPs, further conditions on §401 Certification specific to a particular NWP are also listed below:

NWP 7: *Outfall Structures and Maintenance*, except for associated intake structures

NWP 12: *Utility Line Activities*, except for associated intake structures or for the purposes of transporting non-potable raw surface water

NWP 13: *Bank Stabilization*, except when used for the protection of intake structures

NWP 14: *Linear Transportation Projects*

NWP 18: *Minor Discharges*, except when used to authorize water withdrawals such as the construction of an intake structure, weir or water diversion structure

NWP 19: *Minor Dredging*, except when used to create a deep space for water withdrawal

NWP 21: *Surface Coal Mining Activities*

NWP 25: *Structural Discharges*, except when used to authorize structures such as pilings to construct a platform to mount a pump for water withdrawals



NWP 27: *Stream and Wetland Restoration Activities*, provided that when used to permit a wetland mitigation bank, compensation for any surface water impacts is debited from the bank credits

NWP 39: *Residential, Commercial and Institutional Developments*, except for impoundments for irrigation of golf courses

NWP 42: *Recreational Facilities*, except for impoundments for irrigation of golf courses or for snowmaking

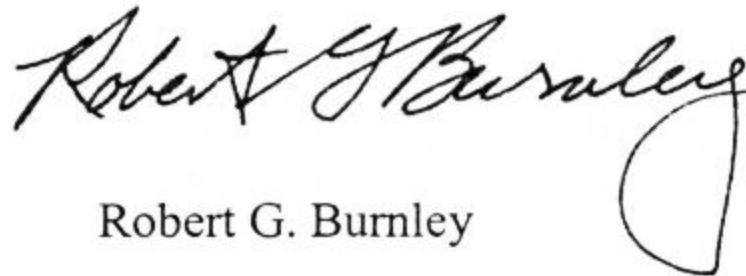
NWP 43: *Stormwater Management Facilities*

NWP 44: *Mining Activities*, except for hydraulic dredging

As to the exceptions for activities that would otherwise qualify for one of these Nationwide Permits, the State will continue to process applications for individual §401 Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC 25-210-10 et seq. To accomplish our goal of individual review of certain activities, the Commonwealth is requesting that the Corps forward to the Department of Environmental Quality pre-construction notifications for any activities that fall into an excepted category. We also remind you that if an applicant is covered by a certified NWP, then they are automatically covered under a VWP General Permit for that activity until such time as a State Programmatic General Permit is issued for that activity.

Thank you for your continuing cooperation in the administration of the Joint Permit Program.

Very truly yours,



Robert G. Burnley

cc: The Honorable W. Tayloe Murphy, Jr.  
Honorable William A. Pruitt, Commissioner, VMRC  
Mr. Mike Murphy, DEQ  
Mr. Larry Lawson, DEQ  
Regional Office Directors, DEQ